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ACT OF GOD.

A land slide in a railway cut, caused by an ordinary fall of rain, is not an "act of God" which will exempt the railway company from liability to passengers for injuries caused thereby while being carried on the railway. *Gleeson* v. *Virginia Midland Railway*, 435.

ADMIRALTY.

1. The general rule, which prevails in cases tried by a Circuit Court without a jury, that the trial court is bound to find every fact material to its conclusion of law, and that a refusal to do so, if properly excepted to, is ground for reversal, prevails also in admiralty causes. *The E. A. Packer*, 360.
2. The libel in this case set forth, as ground for recovery, a collision between the barge Cross Creek in tow by the tug Packer, and the barge Atlanta, in tow by the tug Wolverton, whereby the latter barge and its cargo suffered material injury. The main question at issue was as to which tug was in fault. After the Circuit Court had made its findings of fact, the claimant submitted requests for several additional findings, which the judge declined to find otherwise than as he had already found. Among these was the following "The porting of the Wolverton's wheel, when she was about 200 feet from the Packer, was a change of four or five points from her course." It appeared from the evidence brought up with the exceptions that such was the fact. *Held*, that the claimant was entitled to a finding in regard to this point. *Ib.*

ALABAMA.

See FEES, 18.

ALABAMA CLAIMS.

1. The sum awarded by the Tribunal of Arbitration at Geneva, when paid, constituted a national fund, in which no individual claimant had any rights legal or equitable, and which Congress could distribute as it pleased. *Williams* v. *Heard*, 529.
2. The decisions and awards of the Court of Commissioners of Alabama Claims, under the statutes of the United States, were conclusive as to

the amount to be paid upon each claim adjudged to be valid, but not as to the party entitled to receive it. *Ib.*

3. A claim decided by that court to be a valid claim against the United States is property which passes to the assignee of a bankrupt under an assignment made prior to the decision. *Ib.*

ARKANSAS.

See TAX AND TAXATION.

BANK CHECK.

A bank check is a "bill of exchange" within the meaning of that term as used in the Statutes of Illinois prescribing the term of five years after the cause of action accrues, and not thereafter, as the time within which an action founded upon it must be commenced. *Rogers* v. *Durant*, 298.

BANKRUPTCY.

See ALABAMA CLAIMS, 3,
JURISDICTION, A, 9.

CASES AFFIRMED.

1. *Gibson* v. *Shufeldt*, 122 U. S. 27 affirmed. *Henderson* v *Carbondale Coal Co.*, 25.
2. This case is affirmed upon the authority of *Harter* v. *Kernochan*, 103 U. S. 562, and other cases. *Borah* v. *Wilson*, 47
3. *United States* v. *Barlow*, 132 U. S. 271, affirmed and applied to the point that when there is evidence tending to establish the issues on the plaintiff's part, it is error to take the case from the jury. *United States* v. *Chidester*, 49.
4. The question of the fraudulent organization of Comanche County in Kansas was fully considered by this court in *Comanche County* v *Lewis*, 133 U. S. 198, and is no longer open. *Harper County Commissioners* v *Rose*, 71.
5. The validity of bonds such as are sued on in this case was settled by the decisions in *Lewis* v *Commissioners*, 105 U. S. 739, and *Comanche County* v *Lewis*, 133 U. S. 198. *Ib.*
6. *Hilton* v *Dickinson*, 108 U. S. 165, affirmed and applied. *Block* v. *Darling*, 234.
7. *Blake* v. *United States*, 103 U. S. 227, affirmed and followed. *Mullan* v *United States*, 240.
8. *In re Wood, Petitioner*, 140 U. S. 278, affirmed and applied. *In re Shubuya Jugiro*, 291.
9. *Hardin* v. *Jordan*, 140 U. S. 371, affirmed. *Mitchell* v. *Smale*, 406.
10. *Comegys* v *Vasse*, 1 Pet. 193, again affirmed and applied. *Williams* v *Heard*, 529.

CASES DISREGARDED.

The ruling of the Supreme Court of Illinois in its opinion in *Trustees of Schools* v. *Schroll*, 120 Illinois, 509, that a grant of lands bounded by a lake or stream does not extend to the centre thereof, was not necessary to the decision of the case, and being opposed to the entire course of previous decisions in that State, it is disregarded. *Hardin* v. *Jordan*, 371.

CASES DISTINGUISHED OR EXPLAINED.

1. *Clark* v. *Smith*, 13 Pet. 195, distinguished from this case. *Scott* v *Neely*, 106.
2. *Holland* v. *Challen*, 110 U. S. 15, explained, and shown to contain nothing sanctioning the enforcement in the Federal courts of any rights created by state law, which impair the separation established by the Constitution between actions for legal demands and suits for equitable relief. *Ib.*
3. *United States* v. *Weld*, 127 U. S. 51, distinguished. *Williams* v. *Heard*, 529.

CHINESE.

The result of the legislation respecting the Chinese would seem to be this, that no laborers of that race shall hereafter be permitted to enter the United States, or even to return after having departed from the country, though they may have previously resided therein and have left with a view of returning; and that all other persons of that race, except those connected with the diplomatic service, must produce a certificate from the authorities of the Chinese government, or of such other foreign government as they may at the time be subjects of, showing that they are not laborers, and have the permission of that government to enter the United States, which certificate is to be vised by a representative of the government of the United States. *Wan Shing* v *United States*, 424.

CIRCUIT COURT COMMISSIONERS.

See FEES.

CITIZEN.

See SHIP

CLAIMS AGAINST THE UNITED STATES.

See ALABAMA CLAIMS.

CLAIMS IN FAVOR OF THE UNITED STATES.

See PUBLIC LAND, 3.

COMMON CARRIER.

See RAILROAD, 2, 3.

COMMON LAW

See COURTS OF GREAT BRITAIN.

CONFLICT OF LAWS.

See RECEIVER, 1.

CONSTITUTIONAL LAW

1. A suit in equity against the board of land commissioners of the State of Oregon, brought by a purchaser of swamp and overflowed lands under the act of October 26, 1870, in order to restrain the defendants from doing acts which the bill alleges are violative of the plaintiff's contract with the State when he purchased the lands, and which are unconstitutional, destructive of the plaintiff's rights and privileges, and which it is alleged will work irreparable damage and mischief to his property rights so acquired, is not a suit against the State within the meaning of the Eleventh Amendment to the Constitution of the United States. *Pennoyer* v. *McConnaughy*, 1.

2. The cases reviewed in which suits at law or in equity against officials of a State, brought without permission of the State, have been held to be, either suits against the State, and therefore brought in violation of the Eleventh Amendment to the Constitution; or, on the other hand, suits against persons who hold office under the State, for illegal acts done by them under color of an unconstitutional law of the State, and therefore not suits against the State. *Ib.*

3. The act of the legislature of Oregon of February 16, 1887, declaring all certificates of sale of swamp or overflowed lands void on which twenty per cent of the purchase price was not paid prior to January 17 1879, and requiring the board of commissioners to cancel such certificates, impaired the contract made by the State with the defendant in error under the act of October 26, 1870, as that act and the act of January 17, 1879, are construed by the court, and was therefore violative of article 1, section 10, of the Constitution of the United States. *Ib.*

4. When the bonds of the plaintiff in error which form the basis of the subject of controversy were issued, there existed a power of taxation sufficient to pay them and their accruing coupons, which power entered into and formed part of the contract, and could not be taken away by subsequent legislation. *Scotland County Court* v *Hill*, 41.

5. The Circuit Court of the United States in Mississippi cannot, under the operation of sections 1843 and 1845 of the Code of Mississippi of 1880, take jurisdiction of a bill in equity to subject the property of the defendants to the payment of a simple contract debt of one of them, in advance of any proceedings at law, either to establish the validity and amount of the debt, or to enforce its collection, in which proceedings the defendant is entitled, under the Constitution, to a trial by jury. *Scott* v *Neely*, 106.

6. The general proposition that new equitable rights created by the States may be enforced in the Federal courts is correct, but it is subject to the qualification that such enforcement does not impair any right conferred, or conflict with any prohibition imposed by the Constitution or laws of the United States. *Ib.*

7. When a defendant appears in an action in a state court and responds to the complaint as filed, but takes no subsequent part in the litigation, and on those pleadings a judgment is rendered in no way responsive to them, he is not estopped by the judgment from setting up that fact in bar to a recovery upon it, and the Constitution of the United States is not violated by the entry of a judgment in his favor on such an issue, raised in an action on the judgment brought in a court of another State. *Reynolds* v. *Stockton*, 254.

8. After final judgment entered here, affirming a judgment of a Circuit Court of the United States denying an application for a writ of *habeas corpus*, in favor of a person convicted of murder by a state court, and held in custody by the authorities of the State, the restraint upon the jurisdiction of the state court terminates, and that court has power to proceed in the case without waiting for the mandate to be sent down from this court to the Circuit Court. *In re Shubuya Jugiro*, 291.

9. Several other grounds set forth in the application and stated in the opinion raise no constitutional question. *Ib.*

10. The statute of California of March 23, 1876, entitled "An act to authorize the widening of Dupont Street in the city of San Francisco" provides for a due process of law for taking the property necessary for that purpose, and is not repugnant to the Fourteenth Amendment to the Constitution of the United States. *Lent* v. *Tillson*, 316.

11. Mere errors in the administration of a state statute which is not repugnant to the Constitution of the United States will not authorize this court, in its reëxamination of the judgment of the state court on writ of error, to hold that the State had deprived, or was about to deprive a party of his property without due process of law. *Ib.*

12. An executive agency, created by a statute of a State for the purpose of improving public highways, and empowered to assess the cost of its improvements upon adjoining lands, and to put up for sale and buy in for a term of years for its own use any such lands delinquent in the payment of the assessment, does not, by such a purchase, acquire a contract right in the land so bought which the State cannot modify without violating the provisions of the Constitution of the United States. *Essex Public Road Board* v. *Skinkle*, 334.

13. Such a transaction is matter of law and not of contract, and as such is not open to constitutional objections. *Ib.*

14. Even as to third parties an assessment is not a contract in the sense in which the word is used in the Constitution of the United States. *Ib.*

15. By the Constitution of the United States a government is ordained and established "for the United States of America," and not for countries outside of their limits; and that Constitution can have no operation in another country.
16. The laws passed by Congress to carry into effect the provisions of the treaties granting exterritorial rights in Japan, China, etc. (Rev. Stat. §§ 4083–4096), do no violation to the provisions of the Constitution of the United States, although they do not require an indictment by a grand jury to be found before the accused can be called upon to answer for the crime of murder committed in those countries, or secure to him a jury on his trial. *In re Ross*, 453.
17. The provision in Rev. Stat. § 4086, that the jurisdiction conferred upon ministers and consuls of the United States in Japan, China, etc., by §§ 4083, 4084 and 4085, shall "be exercised and enforced in conformity with the laws of the United States," gives to the accused an opportunity of examining the complaint against him, or of having a copy of it, the right to be confronted with the witnesses against him, and to cross-examine them, and to have the benefit of counsel, and secures regular and fair trials to Americans committing offences there, but it does not require a previous presentment or indictment by a grand jury, and does not give the right to a petit jury. *Ib.*
18. The jurisdiction given to domestic tribunals of the United States over offences committed on the high seas in the district where the offender may be found, or into which he may be first brought, is not exclusive of the jurisdiction of a consular tribunal in Japan, China, etc., to try for a similar offence, committed in a port of the country in which the tribunal is established, when the offender is not taken to the United States. *Ib.*
19. The act of August 8, 1890, 26 Stat. 313, c. 728, enacting "that all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise" is a valid and constitutional exercise of the legislative power conferred upon Congress, and, after that act took effect, such liquors or liquids, introduced into a State or Territory from another State, whether in original packages or otherwise, became subject to the operation of such of its then existing laws as had been properly enacted in the exercise of its police powers — among which was the statute in question as applied to the petitioner's offence. *In re Rahrer*, 545.

See CASES DISTINGUISHED, 2.

CONSULAR COURTS.

See CONSTITUTIONAL LAW, 16, 17, 18.

CONTEMPT.

See MANDAMUS, 2.

CONTRACT.

1. A contract by a mortgagee, made on receiving the mortgage, that he will hold the securities, and that the mortgagor may "sell the property named in said deeds and make titles thereto, the proceeds of the sale to go to the credit of" the mortgagee, gives to the mortgagor power to sell for cash, free from the mortgage, but not to exchange for other lands, and does not cast upon the purchaser for cash, the duty of seeing that the mortgagor appropriates the proceeds according to the agreement. *Woodward* v *Jewell*, 247
2. Such a contract is not a power of attorney to the mortgagor to sell land of which the title is in the mortgagee, but only the consent of a lien holder to the release of his lien in case a sale is made, and it is not required by the laws of Georgia to be executed before two witnesses. *Ib.*
3. Several railroad companies combined to construct an elevator, to be connected with their respective roads, each to contribute an equal sum towards its costs, and each to receive corresponding certificates of stock in a corporation organized to take title to the elevator and to construct it. This arrangement was carried out. *Held*, (1) That the interest of each company in it was as a stockholder in the company which constructed it; (2) That no company had an interest in the property itself which it could mortgage, (3) That such stock would not pass to a mortgagee of one of the railroads under a general description as an appurtenance to the road. *Humphreys* v. *McKissock*, 304.

See INSURANCE, 1, 3,
JURISDICTION, A, 8.

COPYRIGHT.

1. A label placed upon a bottle to designate its contents is not a subject for copyright. *Higgins* v. *Keuffel*, 428.
2. In order to maintain an action for an infringement of the ownership of a label, registered under the provisions of the act of June 18, 1874, 18 Stat. 78, 79, c. 301, it is necessary that public notice of the registration should be given by affixing the word "copyright" upon every copy of it. *Ib.*

COURT AND JURY.

1. In an action against a railroad company by a passenger to recover damages for injuries received at the station of arrival by reason of its improper construction, if there be conflicting evidence, the case should

be submitted to the jury under proper instructions. *Pennsylvania Railroad* v *Green*, 49.

2. When the trial court has given the substance of a requested charge to the jury, it is under no obligation to repeat it in the requested language. *Ætna Life Ins. Co.* v. *Ward*, 76.
3. When evidence offered by one party at the trial tends to discredit that offered by the other, it is for the jury to weigh and decide, under proper instructions from the court. *Ib.*
4. In an action to recover on a policy of life insurance where the defence is that the death was caused by intemperance, which by the terms of the policy exempted the company from liability, it is no error in the court to instruct the jury that they are at liberty to reject the diagnosis of a medical witness offered on behalf of the defendant, if they have no confidence in his skill and experience, the same having been assailed by the plaintiff's testimony. *Ib.*
5. An instruction to the jury in such case that the evidence of the defence need not be so convincing as to be beyond reasonable doubt, but that the weight of testimony must decidedly preponderate on the side of the defendant is not error, when the two clauses are taken together and in connection with the whole tenor and effect of the charge, although the phrase "decidedly preponderate" is not technically exact with reference to the weight and quantity of evidence necessary to justify a verdict in civil cases. *Ib.*
6. A court is not bound to repeat, in the words of a request for instructions, instructions which have already been given in substance in another form. *Marchand* v. *Griffon*, 516.

See CASES AFFIRMED, 3.

COURT MARTIAL.

When the commander-in-chief of a squadron, not in the waters of the United States, convenes a court martial to try an officer attached to the squadron, more than half of whose members are juniors in rank to the accused, the courts of the United States will assume, when his action in this respect is attacked collaterally, and nothing to the contrary appears on the face of the order convening the court, that he properly exercised his discretion, and that the trial of the accused by such a court could not be avoided without inconvenience to the service. *Mullan* v. *United States*, 240.

COURTS OF GREAT BRITAIN.

A judicial decision of the present day, made by the court of highest authority in Great Britain, is entitled to the highest consideration on a question of pure common law. *Hardin* v. *Jordan*, 371.

CRIMINAL LAW

1. At common law it was essential in a trial for a capital offence, that the prisoner should be present, and that it should appear of record that he

was asked before sentence whether he had anything to say why it should not be pronounced. *Ball* v. *United States*, 118.

2. An indictment for murder which fails to aver the time of the death is fatally defective if found more than a year and a day after the death. *Ib.*
3. An indictment for murder which fails to aver the place of the death is also fatally defective. *Ib.*
4. Under § 5 of the act of March 3, 1891, entitled "An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," a writ of error may, even before July 1, 1891, issue from this court to a Circuit Court, in the case of a conviction of a crime under § 5209 of the Revised Statutes, where the conviction occurred May 28, 1890, but a sentence of imprisonment in a penitentiary was imposed March 18, 1891. *In re Claasen*, 200.
5. A crime is "infamous" under that act, where it is punishable by imprisonment in a state prison or penitentiary, whether the accused is or is not sentenced or put to hard labor. *Ib.*
6. Such writ of error is a matter of right, and, under § 999 of the Revised Statutes, the citation may be signed by a justice of this court, as an authority for the issuing of the writ under § 1004. *Ib.*
7. At the time of the conviction, no writ of error from this court, in the case, was provided for by statute, nor was any bill of exceptions, with a view to a writ of error, provided for by statute or rule; and, therefore, a mandamus will not lie to the judge who presided at the trial, to compel him to settle a bill of exceptions which was presented to him for settlement after the sentence; nor can the minutes of the trial, as settled by the judge by consent, and signed by him, and printed and filed in July, 1890, and on which a motion for a new trial was heard in October, 1890, be treated by this court, on the return to the writ of error, as a bill of exceptions properly forming part of the record. *Ib.*
8. A criminal court in the Southern District of New York, sitting as a Circuit Court therein, under § 613 of the Revised Statutes, and composed of the three judges named in that section, to hear a motion for a new trial and an arrest of judgment, in a criminal case previously tried by a jury before one of them, is a legally constituted tribunal. *Ib.*
9. A justice of this court on allowing such writ and signing a citation had authority also to grant a *supersedeas* and stay of execution. *Ib.*

See CONSTITUTIONAL LAW, 8, 16, 17, 18,
HABEAS CORPUS,
PARDON.

CUSTOMS DUTIES.

1. In an action against a collector to recover back an alleged excess of duties imposed upon an importation of iron rails, the duty having been

imposed upon them as "iron bars for railroads" under Rev Stat. § 2504, Schedule E, and the importer claiming that they were subject to duty as "wrought scrap iron" under the same schedule, the burden of proof is on the plaintiff to satisfy the jury that they had been in actual use before exportation, and that fact must be proved in order to recover. *Dwight* v *Merritt*, 213.

2. The dutiable classification of articles imported must be ascertained by an examination of them, and not by their description in the invoice. *Ib.*

3. The statutes codified in the Revised Statutes and repealed with their enactment may be referred to in order to interpret the meaning of obscure and ambiguous phrases in the revision, but not when the meaning is clear and free from doubt. *Ib.*

DECREE.

A decree which determines the whole controversy between the parties, leaving nothing to be done except to carry it into execution, is a final decree for the purpose of appeal, and none the less so that the court retains the fund in controversy, for the purpose of distributing it as decreed. *Lewisburg Bank* v. *Sheffey*, 445.

EJECTMENT.

In ejectment a plaintiff must stand or fall by his own title, and cannot avail himself of a defect in the title of the defendant. *Hardin* v. *Jordan*, 371.

EQUITY.

1. A court of equity has full power over its orders and decrees during the term at which they are entered, and may grant a rehearing of a cause at the term at which it was heard and decided. *Henderson* v. *Carbondale Coal Co.*, 25.

2. This suit is brought to determine the legal effect of a will, and of a modifying contract in regard to it made by those interested. As "the whole question in the case is one of fact," the court has "given the evidence a very careful examination," and, without determining the legal effect of the will or the contract, and proceeding on the real intention of the parties, which were fair to all interested, and have been acted upon and acquiesced in by every one concerned for a long period, and deeming it for the interest of all concerned and of the community that litigation over this estate should cease, it makes a decree to effect those objects. *Albright* v. *Oyster*, 493.

See CASES DISTINGUISHED, 2; CONSTITUTIONAL LAW, 5, 6; DECREE; JUDGMENT, 1; MUNICIPAL CORPORATION, 1, 2; PUBLIC LAND; RECEIVER.

EQUITY PLEADING.

See PUBLIC LAND, 1, 4.

ESTOPPEL.

The adverse decision of the land department does not estop plaintiff, because it had no jurisdiction over the case. *Hardin* v *Jordan*, 371.

See CONSTITUTIONAL LAW, A, 7

EVIDENCE.

1. The presumption that a letter mailed in the ordinary way reaches its destination, is a presumption of fact, not of law, and does not arise unless it also appears that the person to whom it is addressed resides in the city or the town to which it is addressed. *Henderson* v *Carbondale Coal Co.*, 25.
2. A *bona fide* purchaser, before maturity, of coupon bonds of a railroad company payable to bearer, takes them freed from any equities that might have been set up against the original holder; and the burden of proof is on him who assails the *bona fides* of such purchase. *Kneeland* v. *Lawrence*, 209.
3. Uncontradicted evidence of interested witnesses to an improbable fact does not require judgment to be rendered accordingly. *Quock Ting* v. *United States*, 417.

See COURT AND JURY, 4, 5;
PATENT FOR INVENTION, 5, 9, 10, 11.
RAILROAD, 3.

EXCEPTION.

See JURISDICTION, A, 6.

EXECUTIVE.

The President has power by and with the advice and consent of the Senate to displace an officer in the army or navy by the appointment of another person in his place. *Mullan* v. *United States*, 240.

EXTERRITORIALITY.

See CONSTITUTIONAL LAW, 16, 17, 18.

FEES.

1. There being a dispute between the appellee, a commissioner of a Circuit Court of the United States, and the appellant, respecting the official fees of the former for services in criminal cases. *Held*, (1) That the law of the State in which the services are rendered must be looked at in order to determine what are necessary; (2) That in Tennessee a temporary mittimus may become necessary, and a charge for it should be allowed unless there has been an abuse of discretion in regard to it. (3) That only one fee can be charged for taking the acknowledgment of defendants' recognizances, but that one fee can be charged, as an acknowledgment in such case is necessary; (4) That charges for drawing complaints and for taking and certifying depositions to file are proper; (5) That a charge for "entering returns to process" is

unobjectionable; (6) That a charge for "writing out testimony" is allowable; (7) That the items for fees for dockets, etc., which were allowed on the authority of *United States* v. *Wallace*, 116 U. S. 398, decided at October term, 1885, should have been disallowed, as the right to make such charges was taken away by the proviso in the deficiency appropriation act of August 4, 1886, 24 Stat. 274, which, although a proviso in an annual appropriation bill, operated to amend Rev. Stat. § 847. (8) That a commissioner, acting judicially, has the discretion to suspend a hearing, and that per diem fees for continuances should be allowed. *United States* v. *Ewing*, 132.

2. There being a dispute between the United States and a commissioner of a Circuit Court of the United States, acting as Chief Supervisor of Elections, respecting the official fees of the latter; *Held*, (1) That he was entitled to charge as commissioner for drawing the oaths of the supervisors, for administering them and for his jurat to each oath; (2) Also for drawing affidavits of services by each supervisor for which compensation was claimed, as such affidavit had been required by the government; (3) That he should be allowed for drawing complaints in criminal proceedings; (4) That the charges for docket fees should be disallowed, (5) That he should be allowed for preparing and printing the instructions to supervisors as a whole, but not a charge per folio for each copy furnished to a supervisor; (6) That the same rule should be applied to special instructions to supervisors, (7) That the charge for notifying supervisors of their appointments should be disallowed, (8) That the department of justice having demanded copies of the oaths of office of the supervisors, the charge for them should be allowed, (9) That the charges for certificates to the deputy marshals' and supervisors' accounts should be allowed for the same reason, (10) That the statute makes no provision for the allowance of mileage and attendance upon court in his capacity of commissioner; (11) That his charge for administering oaths to voters in his capacity of commissioners should be allowed, (12) That his per diem charge of $5 per day should be disallowed. *United States* v. *McDermott*, 151.

3. There being a dispute between the United States and Pomier respecting his charges for his services as Chief Supervisor of Elections, *Held*, (1) That he was entitled to charge a fee for filing recommendations for appointments (entitled by him informations), but not for recording and indexing them, (2) That he was entitled to charge for indexing appointments, but not for recording them, (3) That he was entitled to charge for preparing instructions to supervisors; (4) That he was entitled to charge a reasonable sum, within the discretion of the court and the treasury accounting officers, for procuring and distributing the same, (5) That he was not entitled to a per diem charge for attendance upon the Circuit Court; (6) That he was entitled to charge for stationery, and for printing forms and blanks. *United States* v. *Pomier*, 160.

4. On the authority of *United States* v. *Ewing*, *ante*, 142, the appellee's fees as commissioner of the Circuit Court for the Middle District of Alabama, acting in criminal cases, are allowed for "drawing complaints," in connection with recognizances of defendants for examination, and for recognizances of witnesses, and for the charge per folio for depositions taken on examination and on the authority of *United States* v. *McDermott*, *ante*, 151, the fees for administering oaths and for each jurat are allowed. *United States* v. *Barber*, 164.
5. The appellee is also entitled to a fee for filing a complaint; to charge per folio for pay rolls of witnesses; and to charge per folio for transcripts of proceedings when the originals are not sent up; but he is not allowed to charge for filing and entering every declaration, etc., if several are attached together. *Ib.*
6. When a series of sheets are attached together, they form a single paper within the meaning of the law. *Ib.*
7. A clerk of a Circuit or District Court of the United States, receiving papers sent up in criminal cases by the commissioners before whom the examinations were had, may file them in the order and as they come from the commissioners, and is entitled to his fee for filing each such paper. *United States* v *Van Duzee*, 169.
8. He may also charge for filing oaths, bonds and appointments of deputy marshals, jury commissioners, bailiffs, district attorneys and their assistants, and further for recording them if required by order of court or by custom to do so, but not for administering the oaths of office to them or for preparing their official bonds. *Ib.*
9. He is also entitled to his legal charges for approving the accounts of such officers under the act of February 22, 1875, 18 Stat. 333, c. 95. *Ib.*
10. He is also entitled to charge for furnishing a copy of an indictment to the defendant when ordered to do so by the court; but not otherwise. *Ib.*
11. He is also entitled to a fee for filing criminal cases sent up by a commissioner, but not for docketing the same unless indictment is found. *Ib.*
12. When the Treasury Department requires copies of orders for payment by the marshal of sums due to jurors and witnesses to be authenticated by the seal of the court, the clerk is entitled to his fee for affixing it, but not otherwise. *Ib.*
13. He is entitled to a fee for entering an order for trial and recording a verdict in a criminal case, that charge not being covered by the fee "for making dockets and indices, issuing venire. taxing costs," etc. *Ib.*, as corrected in *United States* v. *Van Duzee*, 199.
14. Charges for filing precipes for bench warrants are proper; but no such precipe is required after sentence, the sentence being in itself an order for a mittimus. *United States* v *Van Duzee*, 169.
15. When it is the practice in a district to require records to be made up in criminal cases, the clerk is entitled to charge for incorporating in it the transcript from the commissioner. *Ib.*

16. When, in a district, there is a rule of court that the clerk, in issuing subpœnas in criminal cases, shall make copies to be left with witnesses, he is entitled to compensation for such copies. *Ib.*
17 Whether a complaint in a criminal proceeding is so unnecessarily prolix that the commissioner who drew it should not be allowed charges for it in excess of three folios, is a question of fact upon which the decision of the court below will be accepted. *United States* v. *Barber* 177
18. It is within the discretion of a commissioner of a Circuit Court of the United States in Alabama to cause more than one warrant against the same party for a violation of the same section of the Revised Statutes to be issued, and when the court below approves his accounts containing charges for such issues, it is conclusive upon the accounting officers of the Treasury that the discretion was properly exercised. *Ib.*
19. The acknowledgment of a recognizance in a criminal case by principal and sureties is a single act, for which only a single fee is chargeable. *Ib.*

FEME COVERT.

See LOCAL LAW, 5, 6.

FINAL DECREE.

See JUDGMENT, 1.

FRAUD.

Money deposited by the plaintiff with the defendant, in order to cheat and defraud plaintiff's creditors, may be recovered back by him. *Block* v. *Darling*, 234.

GRAND JURY.

See HABEAS CORPUS, 1, 4.

HABEAS CORPUS.

1. When the statutes of a State do not exclude persons of African descent from serving as grand or petit jurors, a person accused in a state court of crime, who desires to avail himself of the fact that they were so excluded in the selection of the grand jury which found the indictment against him, or of the petit jury which tried him, should make the objection in the state court during the trial, and, if overruled, should take the question for decision to the highest court to which a writ of error could be sued out from this court, and failing to do so, he cannot have the adverse decision of the state court reviewed by a Circuit Court of the United States upon a writ of *habeas corpus*. *In re Wood*, 278.
2. The question raised in this case could have been raised and determined by the trial court in New York, on a motion to set aside the indictment. *Ib.*
3. It was not intended by Congress that Circuit Courts of the United States should, by writs of *habeas corpus*, obstruct the ordinary admin-

istration of the criminal laws of the State through its own tribunals. *Ib.*

4. A deficiency in the number of grand jurors prescribed by law, there being present and acting a greater number than that requisite for the finding of an indictment, is not such a defect as vitiates the entire proceedings, and compels his discharge on *habeas corpus*, though unnoticed by the prisoner until after trial and sentence. *In re Wilson*, 575.
5. If it be doubtful whether the defendant can, after trial and verdict, take advantage of such a defect by direct challenge, it is clear that the defect does not go to the jurisdiction, and cannot be taken advantage of by a collateral attack in *habeas corpus*. *Ib.*

HUSBAND AND WIFE.

See LOCAL LAW, 5, 6.

ILLINOIS.

See BANK CHECK; CASES DISREGARDED, LEASE, 4, RIPARIAN RIGHTS.

INDICTMENT.

See CRIMINAL LAW, 2, 3.

INFAMOUS CRIME.

See CRIMINAL LAW, 5.

INSURANCE.

1. A policy of insurance, executed in New York by a New York corporation doing business in Missouri, upon an application signed in Missouri by a resident of Missouri, made part of the contract, and declaring that it "shall not take effect until the first premium shall have been actually paid during the life of the person proposed for assurance," and which is delivered, and the first premium paid, in Missouri, is, in the absence of evidence of the company's acceptance of the application in New York, a Missouri contract, and governed by the laws of Missouri. *Equitable Life Assurance Society* v. *Clements*, 226.
2. The Revised Statutes of Missouri of 1879, §§ 5983–5986, establish a rule of commutation upon default in payment of premium after two premiums have been paid on a policy of life insurance, which cannot be varied or waived by express provision in the contract, except in the cases specified in those statutes. *Ib.*
3. A contract of reinsurance to the whole extent of the original insurer's liability is valid, in the absence of usage or stipulation to the contrary *North America Ins. Co.* v. *Hibernia Ins. Co.*, 565.
4. An open policy of insurance, executed in one State and sent to another, and taking effect by acceptance of risks under it by the insurer's agent there, is not affected by local usage of the place where it was executed. *Ib.*

5. A policy of reinsurance, limited to the excess of the original insurer's risk above a certain sum, does not prevent him from reinsuring himself elsewhere within that sum. *Ib.*

See COURT AND JURY, 4, 5.

INTEREST.

1. A judgment in an action of tort, for damages and costs, was rendered in the Supreme Court of the District of Columbia, at special term. It was affirmed by the general term, with costs. The latter judgment was affirmed by this court, with costs. Nothing was said about interest in either of the three judgments. On the presentation of the mandate of this court to the general term, it entered a judgment for the payment of the judgment of the special term, with interest on it at the rate of six per cent per annum from the time it was originally rendered. *Held*, that the judgment on the mandate should have followed the judgment of this court and not have allowed interest. *In re Washington & Georgetown Railroad*, 91.
2. As the amount of the interest was not large enough to warrant a writ of error, the proper remedy was by mandamus, there being no other adequate remedy, and there being no discretion to be exercised by the inferior court. *Ib.*
3. This court does not decide whether a judgment founded on tort bears or ought to bear interest, in the Supreme Court of the District of Columbia, from the date of its rendition. *Ib.*
4. The fact that the judgment of this court merely affirmed the judgment of the general term with costs, and said nothing about interest, is to be taken as a declaration of this court that, upon the record as presented to it, no interest was to be allowed. *Ib.*
5. A mandamus was issued to the general term, commanding it to vacate its judgment so far as concerned the interest, and to enter a judgment on the mandate, affirming its prior judgment, with costs, without more. *Ib.*

INTERNAL REVENUE.

The provision in Rev. Stat. § 3309, that if the Commissioner of Internal Revenue, on making a monthly examination of a distiller's return, "finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller," etc., refers to the real average spirit-producing capacity of the distillery, and not to a fictitious capacity for any particular day or days. *Chicago Distilling Co.* v. *Stone*, 647.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 19.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 19.

JAPAN.

Article IV of the treaty of June 17, 1857, with Japan, is still in force, notwithstanding the provisions in Article XII of the treaty of July 29, 1858. *In re Ross*, 453.

JUDGMENT.

1. The decree of June 8, 1885, dismissing the bill in this case as to certain parties for want of equity, and denying relief to complainant "upon all matters and things in controversy," which was before this court in *Hill* v *Chicago & Evanston Railroad*, 129 U. S. 170, was a final decree as to all matters determined by it, and its finality is not affected by the fact that there was left to be determined by the master, a further severable matter in which the appellant parties had no interest. *Hill* v. *Chicago & Evanston Railway*, 52.

2. On a Sunday morning a jury returned a verdict of guilty against persons on trial for murder, whereupon the court remanded them to custody to await judgment and sentence. *Held*, that this was not a judgment, but only a remand for sentence. *Ball* v. *United States*, 118.

See CONSTITUTIONAL LAW, 7, EVIDENCE, 3, DECREE; INTEREST.

JURISDICTION.

A. OF THE SUPREME COURT OF THE UNITED STATES.

1. The rule in *Gibson* v. *Shufeldt*, 122 U. S. 27, that "in equity as in admiralty, when several persons join in one suit to assert several and distinct interests, and those interests alone are in dispute, the amount of the interest of each is the limit of the appellate jurisdiction," affirmed and applied. *Henderson* v *Carbondale Coal & Coke Co.*, 25.

2. When a party who is ordered to appear in a pending suit in equity, voluntarily appears, without service of process, and answers, setting up his claims, it is too late for him to object that there was error in the order. *Ib.*

3. In a case like this, this court is confined to the consideration of exceptions taken at the trial, to the admission or rejection of evidence and to the charge of the court and its refusals to charge, and it has no concern with questions of fact or with the weight to be given to evidence which was properly admitted. *Ætna Life Ins. Co.* v. *Ward*, 76.

4. It is again decided that an order remanding a cause from a Circuit Court of the United States to the state court from which it was removed, is not a final judgment or decree which this court has jurisdiction to review. *Birdseye* v. *Schaeffer*, 117.

5. When in an action for the recovery of a money demand, a counter-claim of the defendant exceeding $5000 in amount is entirely disallowed, and judgment rendered for the plaintiff on his claim, this court has jurisdiction of a writ of error sued out by the defendant, without regard to the amount of the plaintiff's judgment. *Block* v *Darling*, 234.

6. A general exception "to all and each part of the foregoing charge and instruction" suggests nothing for the consideration of this court. *Ib.*
7. The amount involved in this case, when interest is properly computed, is sufficient to give the court jurisdiction. *Woodward* v. *Jewell*, 247.
8. A bill in equity in a state court, with jurisdiction over the parties, brought to enforce the specific performance of a contract whereby an inventor who, having taken out letters patent for his invention, agreed to transfer an interest therein to the plaintiff, and proceedings thereunder involving no question arising under the patent laws of the United States, and not questioning the validity of the patent, or considering its construction, or the patentability of the device, relate to subjects within the jurisdiction of that court, and its decree thereon raises no Federal question for consideration here. *Marsh* v. *Nichols, Shepard & Co.*, 344.
9. When the judgment of a state court is against an assignee in bankruptcy in an action between him and the bankrupt, where the question at issue is whether the matter in controversy passed by the assignment, this court has jurisdiction in error to review the judgment. *Williams* v. *Heard*, 529.

See CRIMINAL LAW, 9;
DECREE.

B. OF CIRCUIT COURTS OF APPEAL OF THE UNITED STATES.

See CRIMINAL LAW, 4.

C. OF CIRCUIT COURTS OF THE UNITED STATES.

On the 4th of December, 1888, the clerk of the District Court of the United States for the Eastern District of Texas, at Galveston, certified to the Circuit Judge for the fifth circuit that the District Judge of that district was "prevented by reason of illness from continuing the holding of the present November term of the District and Circuit Courts of the United States for the Eastern District of Texas, at Galveston; and also the coming terms of said courts at Tyler, Jefferson and Galveston, in the year 1889." Thereupon the Circuit Judge issued an order designating and appointing "the judge of the Western Judicial District of Louisiana to conclude the holding of the present November term of the District and Circuit Courts for the Eastern District of Texas, at Galveston, and also to hold the coming terms of the District and Circuit Courts in said Eastern District of Texas, during the year 1889, and during the disability of the judge of said district, and to have and exercise within said district during said period, and during such disability, the powers that are vested by law in the judge of said district." On the 12th of March, 1889, Congress created a new division of the Eastern Judicial District of Texas, the courts to be held at Paris, Texas, and with "exclusive original jurisdiction of offences" committed within a designated portion of Indian

Territory attached to that district, and directed two terms to be held, one in April, and one in October. 25 Stat. p. 786, c. 333, § 18. Under the authority so given the judge of the Western District of Louisiana held the Circuit Court at Paris in October, 1889, during which term persons were tried and convicted of the offence of murder, committed in that part of the Indian Territory, and on the following April term they were sentenced to death. Before that term commenced, the regular District Judge of that district died. *Held*, that in holding the October term, the judge acted as a judge *de jure*, and during the April term, if not *de jure*, as a judge *de facto*, whose acts could not be attacked collaterally. *Ball* v. *United States*, 118.

See CONSTITUTIONAL LAW, 5, 6,
EQUITY, 1.

D. OF DISTRICT COURTS OF THE UNITED STATES.

Prior to 1885 the District Courts of a Territory had jurisdiction over the crime of murder, committed by any person other than an Indian, upon an Indian reservation within its territorial limits, and such jurisdiction was not taken away by the act of March 3, 1885, c. 341, § 9, 23 Stat. 385. *In re Wilson*, 575.

E. OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

See INTEREST 1 to 5.

KANSAS.

See CASES AFFIRMED, 4, 5.

LACHES.

See MUNICIPAL CORPORATION, 1 (3),
PUBLIC LAND, 3.

LANDS UNDER WATER.

See RIPARIAN RIGHTS.

LEASE.

1. Equity leans against lessors seeking to enforce a forfeiture of the lease, and only decrees in their favor when there is full, clear and strict proof of a legal right thereto. *Henderson* v. *Carbondale Coal Co.*, 25.
2. Leased property in Illinois being in the hands of a receiver, and there being no evidence that he lived at St. Louis, proof of the mailing of a registered letter to him at that place, claiming a forfeiture of the lease for non-payment of rent, and of an endorsement on the receipt of the receiver's name "per C. M. Pierce" is not such proof of the personal service of demand and notice as authorizes a decree of forfeiture under the statutes of Illinois. *Ib.*
3. No foundation is laid for a decree of forfeiture of a lease for non-payment of rent, if it appears that the lease described in the notice of

claim of forfeiture is a different lease from the lease produced and proved in the judicial proceedings to obtain such a decree. *Ib.*

4. Under the statute of Illinois full, clear and strict proof of delivery to the proper party of a demand for payment of rent in arrear, and notice of claim of forfeiture of a lease in case of failure to do so, is necessary, in order to entitle the lessor to a decree of forfeiture. *Ib.*

LETTER.

See EVIDENCE, 1,
LEASE, 2.

LEX LOCI.

See INSURANCE, 1.

LIMITATIONS, STATUTES OF

See BANK CHECK;
MUNICIPAL CORPORATION, 1 (3).

LOCAL LAW

1. The filing of an unverified general reply to a verified answer in Kansas, does not admit the truth of the statements in the answer if it was not incumbent on the plaintiff to file it. *Harper County Commissioners* v. *Rose*, 71.
2. The act of the legislature of Virginia of March 22, 1842, relating to lands west of the Allegheny Mountains which had become vested in the Commonwealth by reason of the non-payment of taxes, did not operate to transfer such forfeited lands to the holder of an "inclusive grant" within the limits of which grant they were situated, but whose patent was subsequent in date to that of the patentees of the forfeited lands. *Halsted* v. *Buster*, 273.
3. *Bryan* v *Willard*, 21 West Va. 65, is followed, not only because it settles the law of the highest court of a State upon a question of title to real estate within its boundaries, which is identical with the question involved here, but also because the decision is correct. *Ib.*
4. The board of commissioners and the county court of San Francisco had jurisdiction to proceed in the execution of the statute for widening Dupont Street. *Lent* v. *Tillson*, 316.
5. In Louisiana a married woman, sued upon a promissory note signed by her, and defending upon the ground that the debt contracted in her name did not enure to her benefit or the benefit of her separate estate, has the burden of proof to establish that defence. *Marchand* v. *Griffon*, 516.
6. A married woman having been authorized by her husband and a District Court in Louisiana to borrow money and to give her note secured by mortgage on her separate property for its repayment, is not estopped thereby from setting up, in an action on the note and mortgage, that

the debt did not enure to her benefit or the benefit of her separate estate, and from averring and showing facts which constitute a fraud upon her in law, although the word fraud is not used in her plea. and if it appear that the holder of the note and mortgage had advanced the money to the husband, knowing it to be for his sole benefit, neither the wife nor her property would be bound for its payment. *Ib.*

Alabama. *See* FEES, 18.
Arkansas. *See* TAX AND TAXATION.
Illinois. *See* BANK CHECK;
CASES DISREGARDED,
LEASE, 4,
RIPARIAN RIGHTS.
Kansas. *See* CASES AFFIRMED, 4, 5.
Louisiana. *See* NEW ORLEANS.
Mississippi. *See* CONSTITUTIONAL LAW, 5.
Missouri. *See* INSURANCE, 1, 2.
New York. *See* HABEAS CORPUS, 1, 2.
Oregon. *See* CONSTITUTIONAL LAW, 3,
PUBLIC LAND,
SWAMP LAND.

LOUISIANA.

See LOCAL LAW, 5, 6.

MANDAMUS.

1. A statute providing that "for the purpose of having application for and issuing writs of *mandamus*," the court "shall be regarded as open at all times" authorizing a hearing on the return of the alternative writ and the issue of a peremptory writ in vacation. *In re Delgado*, 586.
2. A statute limiting the fine to be imposed for violation of a peremptory writ of *mandamus*, and providing that, when paid, it shall be a bar to an action for any penalty incurred by reason of refusal or neglect to perform the duty, does not deprive the court of power to punish for disobedience of the writ, or to compel obedience by imprisonment. *Ib.*
3. In case of a disputed election to a municipal office, *mandamus* may issue to compel the recognition of the *de facto* officer until the rights of the parties can be determined on *quo warranto*. *Ib.*

See INTEREST, 2, 5.

MANDATE.

See CONSTITUTIONAL LAW, 8,
INTEREST.

MISSISSIPPI.

See CONSTITUTIONAL LAW, 5.

MISSOURI.

See INSURANCE, 1, 2.

MONEY HAD AND RECEIVED.

See FRAUD.

MORMON CHURCH.

The court now orders a decree entered in this case, for which purpose it was reserved at the last term. See *Mormon Church* v. *United States*, 136 U. S. 1, 66. *Mormon Church* v. *United States*, 667.

MORTGAGE.

The conveyance to the mortgagee in this case was a mortgage and not a deed conveying the legal title. *Woodward* v. *Jewell*, 247.

See CONTRACT;
RAILROAD, 1.

MUNICIPAL CORPORATION.

1. June 25, 1870, the town of Lamoille voted to subscribe $30,000 to the stock of appellant, and August 6, 1870, voted to subscribe $10,000 additional thereto. February 1, 1871, the town subscribed $40,000 thereto, issued 40 bonds of $1000 each in payment thereof, and received $40,000 in stock. The company parted with the bonds, and the same were sold for 90 cents on the dollar, and the majority of them came into possession of the appellee. The $10,000 additional subscription was held void as violating the provisions of the Constitution of Illinois, adopted July 2, 1870. Thereupon the appellee filed this bill against the town and the railway company, tendering the bonds for surrender and cancellation, and praying that $10,000 of the stock held by the company should be transferred to him. A decree was entered in accordance with the prayer of the bill, from which the railway company only appealed. *Held*, (1) That the plaintiff's rights, so far as concerned the town, rested on the decree which the town had not appealed from, and there was no matter of subrogation to be considered in the controversy with the railway company; (2) That the railway company, having parted with the bonds for consideration, had no equities which it could set up as against the claim of the plaintiff; (3) That there was no question of laches or limitation, (4) That it was too late to raise the objection that these matters could not be combined in one suit. *Illinois Grand Trunk Railway* v. *Wade*, 65.

See CASES AFFIRMED, 4,
CONSTITUTIONAL LAW, 4.

MUNICIPAL BONDS.

See CASES AFFIRMED, 5,
CONSTITUTIONAL LAW, 4.

NEGLIGENCE.
See RAILROAD, 2, 3.

NEGOTIABLE SECURITIES.
See BANK CHECK,
EVIDENCE, 2.

NEW ORLEANS.

The destination or character of spaces of ground, part of the public quay or levee in the city of New Orleans, dedicated to public use, and *locus publicus* by the law of Louisiana, is not changed so as to make them private property, subject to be taken on execution for the debts of the city, by a lease made pursuant to an ordinance of the city, by which the city grants to an individual the exclusive right for twenty-five years to use such spaces, designated by the city surveyor, and not nearer than one hundred and fifty feet to the present wharves, for the purpose of erecting thereon, for the shelter of sugar and molasses landed at the quay, fire-proof sheds, "with such accommodations and conveniences for the transaction of business as may be necessary;" and also grants to him the exclusive privilege of sheltering sugar and molasses landed at the port; and authorizes him to charge prescribed rates on the sugar and molasses sheltered under the sheds, and, in case those sheds "shall not be of sufficient capacity to meet the demands of increased production, or the requirements of commerce," to erect additional sheds on spaces to be designated by the city; he agrees to keep the sheds in repair, and to pay the city one-tenth of such charges, the sheds are to revert to the city on certain terms at the end of the lease; and right is reserved to the wharfinger to enforce existing regulations against encumbering the quay, and to the city to open or extend streets. *New Orleans* v. *Louisiana Construction Co.*, 654.

NEW YORK.
See HABEAS CORPUS, 1, 2.

OFFICERS IN THE ARMY.
See EXECUTIVE.

OFFICERS IN THE NAVY.
See COURT MARTIAL,
EXECUTIVE.

OREGON.
See PUBLIC LAND.
SWAMP LAND.

ORIGINAL PACKAGE.
See CONSTITUTIONAL LAW 19.

PARDON.

When a person convicted of murder accepts a "commutation of sentence or pardon" upon condition that he be imprisoned at hard labor for the term of his natural life, there can be no question as to the binding force of the acceptance. *In re Ross*, 453.

PATENT FOR INVENTION.

1. Letters patent No. 277,941, granted May 22, 1883, to Cassius M. Richmond for an artificial denture, are void by reason of an abandonment of the invention to the public by the inventor before the patent was applied for. *International Tooth Crown Co.* v *Gaylord*, 55.
2. Letters patent No. 277,943, granted to Cassius M. Richmond May 22, 1883, for a process for preparing roots of teeth for the reception of artificial dentures, are void for want of novelty and for want of invention in the invention claimed in it. *Ib.*
3. It is no invention within the meaning of the law, to perform with increased speed a series of surgical operations, old in themselves and in the order in which they were before performed. *Ib.*
4. Letters patent No. 156,880, granted November 17, 1874, to Robert Cluett for an improvement in shirts, are void for want of invention. *Cluett* v. *Claflin*, 180.
5. By a written agreement signed by both parties, a patentee of a plow granted to another person the right to make and sell the patented plow under the patent, in a specified territory, the latter agreeing to make the plows in a good and workmanlike manner, and advertise and sell them in the usual manner, and at a price not to exceed the usual price, and account twice a year for all plows sold, and pay a specified royalty for each plow sold. After making and selling some plows, the grantee gave notice to the patentee, that he renounced the license. But he afterwards made and sold plows embracing a claim of the patent. The patentee sued him to recover the agreed royalty on those plows. He set up in defence want of novelty and of utility. The case was tried by the court without a jury, which found for the plaintiff on novelty and utility, and gave judgment for him for the amount of the license fees, *Held*, (1) The license continued for the life of the patent, (2) The defendant could not renounce the license except by mutual consent or by the fault of the plaintiff; (3) The plaintiff had a right to regard the license as still in force and to sue for the royalties, (4) This court could not review the finding that the invention was new. *St. Paul Plow Works* v. *Starling*, 184.
6. The ruling out of certain evidence was a matter of discretion, and some of it was immaterial. *Ib.*
7. After the defendant put in evidence earlier patents on the issue of want of novelty, it was proper for the plaintiff to show that, before the date of any of them, he had reduced his invention to practice in a working form. *Ib.*

8. The invention for winding thread upon spools, patented in Great Britain to William Weild by letters patent granted January 22, 1858, the specification being filed July 22, 1858, was published by the filing of the specification before Hezekiah Conant discovered and invented the improvement in machines for winding thread on spools, secured to him by letters patent of the United States, of December 13, 1859, (but antedated June 22, 1859,) and numbered 26,415, and consequently the use of Weild's invention in the United States does not subject the person using it to liability to pay damages to the owners of Conant's patent for such use, or to being restrained in equity from further using it. *Clark Thread Co.* v *Willimantic Linen Co.*, 481.

9. A copy of a patent was attached to a deposition as an exhibit, and the deposition was read at the trial and was returned in the transcript as part of the record by the clerk of the Circuit Court, certified under the seal of the court. *Held*, that although the deposition contained no express minute that the patent was offered in evidence, it must be received as so offered. *Ib.*

10. The evidence of a patentee offered by the owner of the patent in a suit for an infringement of it, as to the actual day when his invention was made, when that becomes material, must be taken most strongly against those who offer it. *Ib.*

11. When the defendant in a suit for infringement of a patent shows that the machine which he is using, and which is claimed to be an infringement, was patented and in use before the date of the plaintiff's patent, the burden of proof is on the latter to show that his invention preceded that of the machine which the defendant is using. *Ib.*

See JURISDICTION, A, 8.

PLEADING.

See LOCAL LAW, 1.

PRACTICE.

1. There being no assignment of errors and no specification of errors, and the record presenting no question of law, the judgment below is affirmed. *Stevenson* v *Barbour*, 48.

2. This writ of error was sued out on time. *Ball* v *United States*, 118.

3. An application for rehearing, made after the adjournment of the term at which the final decree was entered, is made too late. *Lewisburg Bank* v. *Sheffey*, 445.

See CASES AFFIRMED, 3,
CONSTITUTIONAL LAW, 8,
CRIMINAL LAW, 4, 6, 7,
DECREE;
FEES,
HABEAS CORPUS,
JURISDICTION, 2,
MUNICIPAL CORPORATION, 1, 4.

PRINCIPAL AND AGENT.

By the terms of the appointment of a law agent in this country of a corporation established at Dundee in Scotland, and engaged in lending

money upon mortgages of real estate here, he was to "do all work, and carry through all procedure, and see to the execution and registration and publication of deeds, requisite and necessary for giving and securing to the company valid and effectual first and preferable mortgages over real estate for such loans as the directors at Dundee may from time to time sanction and authorize," and was to "be responsible to the company for the validity and sufficiency of all mortgages prepared or taken by" him, was not to take or receive in behalf of the company any commission or bonus from borrowers beyond lawful interest on money lent; nor to act as a local director of the company, or be interested in any property mortgaged, and his "professional fees against borrowers, including abstracts, searches, investigating titles, preparation and recording of mortgages," were not to exceed a scale prescribed. *Held*, that the duties for which he was to be compensated by fees from borrowers, included giving to the company certificates of title; and that his successor, appointed on the same terms, except in being expressly required to grant certificates of title, and in being also made general attorney and counsellor of the company, could not recover anything from the company for making out such certificates. *Hughes* v *Dundee Mortgage Co.*, 98.

PROMISSORY NOTE.

A promissory note made by two persons, one as principal and the other as surety, was endorsed for the accommodation of the principal by the payee, who afterwards, by agreement in writing with the holder, "waives presentment for payment, protest, notice of protest, and consents that the payment thereof may be extended until he gives written notice to the contrary." *Held*, that this authorized only an extension assented to by both makers of the note; that an extension by agreement between the holder and the principal, without the consent of the surety, discharged the endorser; but that no agreement for an extension of time was shown by the following facts. The holder having agreed with the principal "to extend the credit upon renewal notes made by the same parties who executed the original notes," and the surety being too sick to join in the execution of new notes, the holder, at the principal's request, sent him a statement of interest on the notes for four months, as well as blank renewal notes to be signed by both makers when the surety should be able to do so, and afterwards received such interest from the principal, after the surety's death, not knowing he was dead, and expecting the principal to procure and deliver renewal notes as before agreed. *Uniontown Bank* v *Mackey*, 220.

PUBLIC LAND.

1. In suits in equity brought by the United States under the act of Congress passed March 2, 1889, (25 Stat. 850,) against corporations and persons claiming to own lands granted to the State of Oregon by the

acts of Congress of July 2, 1864, (13 Stat. 355,) July 5, 1866, (14 Stat. 89,) and February 25, 1867, (14 Stat. 409,) to declare the lands to be forfeited to the United States, and to set aside, for fraud, patents granted therefor, the defendants pleaded the issuing of certificates by the governor without fraud committed upon or by him, that they were *bona fide* purchasers, for a valuable consideration, without notice; and that they had expended moneys in respect of the lands in good faith. The pleas having been set down for hearing, the Circuit Court sustained them and dismissed the bills, without permitting the plaintiffs to reply to the pleas. *Held*, that they ought to have been allowed to take issue on the pleas. *United States* v *Dalles Military Road Co.*, 599.

2. The act of 1889 intended a full legal investigation of the facts, and did not intend that the interests involved should be determined on the untested allegations of the defendants. *Ib.*
3. The claims of the United States cannot be treated as stale claims, nor can the defences of stale claim and laches be set up against them. *Ib.*
4. Other bills were dismissed on general demurrers, after the bills were dismissed on the hearing on the pleas, and, as it appeared that the disposition of the pleas was regarded as determining all the suits, the decrees in all of them were reversed. *Ib.*

See RIPARIAN RIGHTS,
SWAMP LANDS.

PUBLICATION OF NOTICE.

A publication in a "supplement" to a newspaper of a notice ordered to be published, is a compliance with the order. *Lent* v *Tillson*, 316.

RAILROAD.

1. A railroad company joining in the construction of an elevator on land not belonging to it, and situated at some distance from its road, does not acquire an interest in it which will pass as an appurtenance under a mortgage of its railroad as constructed or to be constructed, and the appurtenances thereunto belonging. *Humphreys* v. *McKissock*, 304.
2. It is the duty of a railway company to so construct the banks of its cuts that they will not slide by reason of the action of ordinary natural causes, and by inspection and care to see that they are kept in such condition, and the failure to do so is negligence, which entails liability for injuries to passengers caused by their giving way. *Gleeson* v. *Virginia Midland Railroad*, 435.
3. An accident to a passenger on a railway caused by the train coming in contact with a land slide, raises, when shown, a presumption of negligence on the part of the railway company, and throws upon it the burden of showing that the slide was in fact the result of causes beyond its control. *Ib.*

See ACT OF GOD,
CONTRACT, 3,
RECEIVER, 2.

RECEIVER.

1. A judgment in a state court against a person receiving an appointment as a receiver ancillary to an appointment as such by a court of another State, binds only such property in his custody as receiver as is within the State in which the judgment is rendered, the court in which primary administration was had, retaining the custody of the remainder. *Reynolds* v. *Stockton*, 254.
2. Necessary supplies purchased on credit by the receiver of a railroad, appointed in foreclosure proceedings, if not paid out of net earnings before the sale, are a charge upon the fund realized from the foreclosure sale; and where the railroad managed by the receiver consists of two or more divisions, which are sold separately and at different times to different purchasers, it will be presumed, in the absence of evidence to the contrary, that the court below has correctly distributed such charges among the different divisions to which they properly belong. *Kneeland* v. *Bass Foundry and Machine Works*, 592.

REHEARING.

See PRACTICE, 3.

REMOVAL OF CAUSES.

1. The defendant in an action in a state court after moving to dismiss the action, and after pleading in abatement answered, December 29, 1884, the last day of the term at which the writ was returnable, and moved to remove the case to the Federal court for the district "in case said motion should not be allowed and in case said plea should not be sustained." No steps being taken on the motion for removal, the case came on for trial in the state court at January term, 1886. The motion being then pressed, the court ruled that it was too late, and proceeded to trial, and gave judgment against the defendant. *Held*, (1) That the conditional application for removal in December, 1884, was not a valid application for removal as contemplated by the statute; (2) That the application made at the trial term in 1886 was made too late. *Manning* v. *Amy*, 137.
2. Plaintiff, a citizen of Illinois, sued in ejectment to recover possession of lands in that State claimed to have been granted to plaintiff's ancestor by a patent of the United States, making the tenant a citizen of that State, defendant. The owner under whom the tenant claimed, a citizen of New York, appeared and on his motion, was made party defendant. He then set up title under another patent from the United States, and moved for a removal of the cause, *first*, upon the ground of diverse citizenship, which was abandoned, and then, *secondly*, that there was a controversy involving the authority of the land department to grant a patent. *Held*, that the case was removable for the second cause. *Mitchell* v. *Smale*, 406.

RIPARIAN RIGHTS.

1. Grants by the United States of its public lands bounded on streams and other waters, made without reservation or restriction, are to be construed as to their effect, according to the law of the State in which the lands lie. *Hardin* v. *Jordan*, 371.
2. It depends upon the laws of each State to what extent the prerogative of the State to lands under water shall extend. The cases reviewed. *Ib.*
3. By the common law, under a grant of lands bounded on a lake or pond which is not tide-water and is not navigable, the grantee takes to the centre of the lake or pond, ratably with other riparian proprietors if there be such and this rule prevailed in Illinois when the patent to the plaintiff's ancestor was granted in 1841, and is still the law of that State, notwithstanding the opinion of its highest court in *Trustees of Schools* v. *Schroll*, 120 Illinois, 509. *Ib.*
4. The ruling of the Supreme Court of Illinois in its opinion in *Trustees of Schools* v. *Schroll*, 120 Illinois, 509, that a grant of lands bounded by a lake or stream does not extend to the centre thereof, was not necessary to the decision of the case, and being opposed to the entire course of previous decisions in that State, it is disregarded. *Ib.*

Hardin v. *Jordan*, 140 U. S. 371, affirmed to the point that in Illinois, under a grant of lands bounded on a lake or pond which is not tide-water and is not navigable, the grantee takes to the centre of the lake or pond ratably with other riparian proprietors, if there be such, and that the projection of a strip or tongue of land beyond the meander line of the survey is entirely consistent with the water of the pond or lake being the natural boundary of the granted land, which would include the projection, if necessary to reach that boundary. *Mitchell* v. *Smale*, 406.

SAILOR.

See SHIP AND SHIPPING.

SERVICE OF PROCESS.

See PUBLICATION OF NOTICE.

SHIP

1. When a foreigner enters the mercantile marine of a nation, and becomes one of the crew of a merchant vessel bearing its flag, he assumes a temporary allegiance to the flag, and, in return for the protection afforded him, becomes subject to the laws by which that nation governs its vessels and seamen. *In re Ross*, 453.
2. The fact that a vessel is American is evidence that seamen on board are Americans also. *Ib.*

SPIRITUOUS LIQUORS.

See CONSTITUTIONAL LAW, 19.

STALE CLAIMS.

See PUBLIC LAND, 3.

STATUTE.

A. CONSTRUCTION OF STATUTES.

A law or treaty should be construed so as to give effect to the object designed, and to that end all its provisions must be examined in the light of surrounding circumstances. *In re Ross*, 453.

B. STATUTES OF THE UNITED STATES.

See CHINESE;
CONSTITUTIONAL LAW, 1, 16, 17, 19,
COPYRIGHT, 2,
CRIMINAL LAW, 4, 6, 8,
CUSTOMS DUTIES, 1,
FEES, 1 (7), 9;
INTERNAL REVENUE,
JURISDICTION, C, 1, D,
PUBLIC LAND, 1, 2;
TERRITORIAL LEGISLATURES.

C. OF THE STATES AND TERRITORIES.

Arkansas. *See* TAX AND TAXATION.
California. *See* CONSTITUTIONAL LAW, 10.
Illinois. *See* BANK CHECK;
LEASE, 4.
Mississippi. *See* CONSTITUTIONAL LAW, 5.
Missouri. *See* INSURANCE, 2.
Oregon. *See* CONSTITUTIONAL LAW, 3,
PUBLIC LAND,
SWAMP LAND.
Virginia. *See* LOCAL LAW, 2.

SUBROGATION.

See MUNICIPAL CORPORATION, 1 (1).

SUPERVISORS OF ELECTIONS.

See FEES, 2, 3.

SWAMP LANDS.

The act of the legislature of Oregon of January 17, 1879, repealing the act of October 26, 1870, concerning the swamp and overflowed lands, and making new regulations concerning the same, did not invalidate an application, duly made before its passage, to purchase such lands; but such an application could be perfected by making the payments required by the act of 1870 after its repeal, but within the time prescribed by that act; and a title thus acquired is good against the State. *Pennoyer* v. *McConnaughy*, 1.

TAX AND TAXATION.

1. In a proceeding instituted under the statute of Arkansas to confirm a tax title to a lot of land, the person who owned the lot when it was sold for taxes may set up in defence defects and irregularities in the proceedings for the sale. *Martin* v *Barbour*, 634.

2. A lot was sold to the State in 1885, for the taxes of 1884, and, after the two years allowed for redemption had expired, it was certified to the commissioner of state lands, and purchased from him by a person who brought the proceeding to confirm the title. The widowed mother of certain minors had bought the lot in 1883, in trust for the minors, and had put money into the hands of an agent to pay the taxes of 1884, but he failed to pay them. The lot was listed for the taxes of 1885 and 1886, and they were paid, as if the lot had not been sold. No suit to show irregularities in the sale was brought within two years from its date *Held*, (1) The irregularities were not cut off, because the prior owners of the lot were deprived of a substantial right; (2) The oath prescribed by statute was not taken by the assessor, or endorsed on the assessment books; (3) There was no record proof of the publication of the notice of the sale for taxes, (4) The right to redeem was prevented from being exercised within the two years by dereliction of duty on the part of officers of the State; (5) The purchaser from the State took his deed subject to the equities and defences which existed against the State, (6) The minors had a right to a decree dismissing the petition to confirm the tax sale, subject to a lien on the lot for the amount of the purchase money on the purchase from the State. *Ib.*

See CONSTITUTIONAL LAW, 4.

TERRITORIAL LEGISLATURES.

It is unnecessary to decide whether the "sixty days'" limitation of the sessions of the legislative assemblies of the Territories means a term of sixty calendar days. *In re Wilson*, 575.

TRADE MARK.

See COPYRIGHT, 2.

TREATY.

See JAPAN;
STATUTE, A.

VESSEL.

See SHIP.

VIRGINIA.

See LOCAL LAW, 2.

WILL.

See EQUITY, 2.